

TURA ADVISORY COMMITTEE MEETING

Summary of Discussion

June 21, 2011

Advisory Committee

Members Present:

Steve Gauthier, Ed Gomes, William Judd, Jennifer Venezia [For Andy Goldberg], Lucille Servidio, Elizabeth Saunders, Gary Nedelman, Carolyn Fiore, Tolle Graham, Sylvia Broude, Mark Rossi

Others Present:

Rich Bizzozero (EEA), Liz Harriman (TURI), Heather Tenney (TURI), Rick Reibstein (OTA), Chris MacIsaac (OTA), Rachel Massey (TURI), Suzi Peck (DEP), David Wawer (MCTA), Sean Moynihan (MCTA), Daniel Saulnier (OTA)

Members Not Present:

Sarah Little, Sam Lipson, Robert Napolitano

Welcome & Introductions

- Executive Director Rich Bizzozero opened the meeting. The draft minutes from the previous meeting (5/19/2011) were distributed and accepted. There was also a brief review of coming tasks for the TURA program: the preparation of a proposed regulation package that would include the separation of hexavalent chromium compounds from the chromium compounds category, designation of formaldehyde and hexavalent chromium as higher hazard substances, incorporation into the TURA list of the chemicals that the US EPA added to their list of chemicals and, if so voted by the Council, the designation of users of TCE in cleaning as a Priority User Segment (PrUS).

Executive Director's Report and Program Agency Updates

➤ Executive Director's Report

- Bob Pliskin stepped down from the Advisory Committee due to time commitments. A possible replacement from the business community has been identified to fill the opening.
- At the Administrative Council meeting held on June 7th, the Council voted to designate formaldehyde as a Higher Hazard Substance (HHS).
- At this time, the Board of Cosmetology has not taken any action on formaldehyde use in salons. Rich Bizzozero has provided the Board with information on formaldehyde previously collected by the TURA program agencies and will continue to be in touch with them.
- The proposed/draft fee structure and recommendation for PrUS designation was submitted to the Council. The opinion of the Advisory Committee was shared with the Council [recommending that the Council go forward with the designation of TCE used in cleaning as a priority, and that the middle option, a fee of \$750 for companies with less than ten employees, be adopted and phased in over three

years]. Designation occurs by vote of the Council, which must occur by the end of the four-year period beginning with designation of TCE as an HHS. OTA is looking into whether or not EEA has the legal authority to set a fee for companies with less than 10 employees and if they have the authority to phase it in. The EEA general counsel has not provided an interpretation yet, but OTA expects an interpretation by the next Administrative Council meeting in July.

- Jim Colman from MassDEP stressed that the resources of the program need to be considered before making a decision.

➤ OTA

- OTA and TURI hosted a demonstration site event at Ophir Optics and developed a case study on the success of the company's work with OTA and TURI.
- OTA hosted energy efficiency workshops and demonstration site events in Tewksbury and Holyoke. The Tewksbury event highlighted the many opportunities for heat recovery. OTA has previously noted that there aren't many incentives for businesses and there are other barriers to adoption such as utility documentation. At Holyoke, presentations were given on financial incentives, followed by a tour of Smith College's co-generation facility, which has achieved an efficiency rating of 85% by using excess heat in the summer to power steam absorption chillers.

➤ TURI

- TURI distributed their Request for Proposals (RFP) for their community grants program. This year's focus will be for projects that can be implemented state-wide. University research proposals are also being accepted. They will issue their industry matching grant program RFP this summer.
- Strategic planning for FY12 is underway, including plans for a supply chain workgroup focused around the military supply chain and mil specs, chemical fact sheets, a model TUR Plan and alternatives assessment for dry cleaners, and a focus group on labor and worker issues around toxics.
- The National Toxicology Program has issued their 12th Report on Carcinogens, and has listed formaldehyde as "known to be a human carcinogen," based on sufficient evidence of cancer from studies in humans: nasopharyngeal cancer, sinonasal cancer, and lymphohematopoietic cancer, specifically myeloid leukemia.
- TURI is doing a Global Chemicals Outlook report for the United Nations Environment Programme (UNEP).

➤ DEP

- The 2009 TURA Information Release is still in the review process, but should be released soon.
- The majority of the 2010 reports have been submitted. There were some technical issues with electronic filings.
- At the previous meeting, MassDEP sought comments from the Advisory Committee on how they can streamline services, make organizational improvements or regulatory changes. They have received some comments on regulatory changes.

Science Advisory Board – Update

- Volatile Methyl Siloxanes: The Science Advisory Board (SAB) is reviewing alternatives to HHSs to see if there are potentially hazardous chemicals being used that are not on the TURA list. The SAB is currently considering Volatile Methyl Siloxanes (VMS), to determine if any should be added to the TURA list of reportable chemicals. VMSs are alternatives to the HHSs TCE and Perchloroethylene (PERC), and the newly-listed n-propyl bromide. There are two categories of VMS, linear and cyclic. There is evidence that VMSs are being used in Massachusetts for dry cleaning and industrial parts cleaning. The US EPA stated their intent to prepare a chemical action plan for cyclic VMS, but has since agreed to enter into an Enforceable Consent Agreement (ECA) with industry instead. That agreement is still being negotiated.
- The SAB is also studying halogenated hydrocarbon compounds as a category, considering the question of whether there are subsets of those compounds that are not already on the list that should be listed as a category. Discussions will continue in the fall.
- The SAB considered, but did not recommend listing, d-limonene solvents.

TCE Solvent Cleaning User Segment - State Resources

- OTA recommends designating a priority user segment (PrUS) for use of trichloroethylene (TCE) in cleaning operations. The deadline for designating a PrUS for TCE (regulation promulgation) is December 27th, 2011. If the Council adopts OTA's recommendation, it would be the first PrUS segment designated by the program. There was a review last year of use of the PBTs that were designated as Higher Hazard Substances when the 2006 TURA amendments were adopted. No PrUSs were designated, though there was a recommendation by the Council to improve the coordination of the existing state programs to address uses of PBTs that are not covered by TURA – such as cosmetology. DEP has identified a total of 19 user segments, which includes one for “solvent cleaning”. The PrUS would only be for solvent cleaning operations and not for coating or any other user segment. The PrUS designation would apply the 1,000 lb use threshold for reporting and planning to all users of TCE for cleaning operations in companies in the TURA listed SIC codes regardless of the number of employees [TURA exempts companies with less than 10 employees, unless a PrUS is designated]. A PrUS also gives the Council and MassDEP additional authorities that they may implement. For example, the Council can lower the 1,000 lb reporting threshold, and MassDEP may establish performance standards or require additional reporting and planning. There was a question raised on the reporting process for the user segments: in the past, a company selected its process codes without any apparent regulatory consequence. Now that a company would be in or out of the Priority User Segment depending on which process code it selected, would companies manipulate their reports to avoid inclusion? The issue deserves consideration and may require additional guidance to firms.
- To determine the potential list of companies that would be affected by a PrUS designation, OTA looked at hazardous waste shipment data [F001 category]. Waste code quantities may be misleading as waste from use in previous reporting years may be included, and the F001 category includes other chlorinated solvents (PERC, methylene chloride, carbon tetrachloride, and chlorinated fluorocarbons), but it is the best information available. OTA created a waste/use ratio based on TURA filer data

from companies known to be using TCE in cleaning. For all TURA filers using TCE in cleaning, approximately 4% of their total quantity of TCE use is reported as F001 waste. OTA used a very conservative estimate that shipping 500 lbs of waste is an indicator that a company is likely using more than 1000 lbs of TCE.

- There are 324 facilities that have recently shipped F001 waste. OTA identified SIC codes for 198 and found that 162 were in TURA SIC codes and 96 in targeted SIC codes [likely to be using TCE for cleaning – primarily SIC 34-36]. If mix of facilities we do not have SIC codes for is similar to those we do, there could be up to 152 facilities that use TCE for cleaning with 40 being large quantity users. Two to eight of the 40 facilities are likely to have less than 10 employees.

Advisory Committee Discussion:

- Most TCE used in cleaning does not end up in the waste stream [emitted to air, not disposed as hazardous waste]. This was considered to offset the fact that pounds of TCE waste are mixtures, including non-TCE materials.
- There are potential opportunities for significant toxics use reduction at facilities in Massachusetts. What about program resources and the ability to service these companies? If 40 companies would be affected, would it be worth designating as a PrUS? What about 20 companies? OTA and TURI do have adequate resources to service a TCE PrUS of 20 to 40 facilities.
- There is a 4-year period to designate a PrUS. It appears that simply designating, with no further action, would satisfy the 4-year limitation.
- Concern was expressed that charging a fee to companies with less than 10 employees in the user segment may adversely affect smaller businesses, and may conflict with the original intent of the statute. However, it was also noted that the Council does have the authority to include smaller businesses with less than 10 employees through a priority user designation, and that these same companies are required to do annual reporting to the program – hence pay a fee. OTA will seek the advice of EEA Counsel to determine what authority and flexibility the Administrative Council has to charge fees to the affected small businesses.
- Can some kind of notification be sent to the universe of potential filers? The program will coordinate resources to notify all potential filers.
- What are the resources required to implement PrUS? Is it a good use of time for the program? Are there alternative ways of educating the target audience? If DEP doesn't have the resources to enforce the PrUS, does it diminish their ability to regulate businesses? Is this the best way to improve toxics use reduction at Massachusetts facilities? Reporting of TCE was reduced by 25% when designated as a HHS. Will additional impact be expected from this?
 - Regulatory changes need to be made, reporting guidance needs to be developed, and changes will need to be made to E-DEP. Minimal additional revenues are anticipated and even if additional revenues are collected, they won't lead to hiring more staff.
 - A question was raised whether or not DEP has resources available for the 2-8 facilities that will be added. While DEP may have constrained resources, OTA has the responsibility to provide assistance to first time filers and has the capacity to handle this increase in work load. TURI has been actively working with

companies at the Surface Solutions Lab and has the capacity to work with more companies.

- An advisory committee member noted that the investment to do a PrUS for TCE would not be large, because the program agencies already have the tools and resources to service this group; it would have an incremental impact on the program resources and a significant impact on communities in which these facilities are located.
- Do businesses have the needed resources to evaluate the alternative and make the change? Is this a de facto ban of TCE for small firms because using 1,000 lbs will cost thousands of dollars? Grant programs, and other funding sources are available. Drop-in substitutes (such as nPB) may be a low or no additional cost alternative. Designation may get companies to consider using less toxic alternatives.
- It will likely get the attention of companies that haven't been paying attention, particularly very small companies. There are exposure risks at all facilities, and they may be more serious at smaller facilities that have not received the scrutiny that larger facilities have. An EPA/TURI project in Rhode Island showed this.
- The reporting threshold can also be lowered by the Council, for any HHS at any time. This could be considered as a complement to PrUS designation.
- This is an opportunity to raise awareness. Are there alternative ways of educating the target audience?
- The smaller the company the more difficult it is to enforce. Smaller business will require more work from the program. Another member replied that it was an opportunity to help very small companies.
- DEP responded to questions about their experience with how many facilities come into reporting on their own, vs. DEP having to enforce to get them in. For example, for PERC, most dry cleaners that they expected to file the first year, did not.
- What about the companies that should be reporting now? The program could follow-up with F001 waste filers.
- Is a PrUS necessary to address the F001 waste filers? Could DEP just follow up with all of them, now that they know who they are? Another member responded that the question on the table was whether TCE should be a PrUS for cleaning – if the program is making it a priority, then it should be a PrUS.
- An Advisory Committee member asked if the committee members present were of a similar opinion, and whether they would like to communicate a consensus recommendation to the Council. The group voted previously to support the designation of TCE as a PrUS, and after considering the matter again, including the issue of limited resources for implementation, renewed their support.

TURA Fee Options for Companies with < 10 Employees

- As discussed previously, OTA is waiting legal clarification on the issues related to charging fees to companies with less than 10 employees.

Roundtable Discussion – Advisory Committee Policy Priorities FY12

- The Administrative Council can designate up to 10 Higher Hazard Substances (HHS) each year. Should they take a different approach to what has been done previously [i.e. reviewing chemicals individually] – such as designating or listing all IARC 1/ carcinogenic chemicals?

- HHS come from the existing SAB More Hazardous list. The SAB originally recommended that the program consider 11 of those more hazardous chemicals as priority candidates for HHS designation. They later added hexavalent chromium to the candidate list. Seven (7) candidate substances are still not HHS¹, and therefore still have thresholds for TURA coverage of 10,000/25,000, instead of 1,000 lbs.
- PERC Priority User Segment designation: additional PERC users would be performing materials accounting and evaluating alternatives if a PrUS is designated. The deadline is December 2012.

Advisory Committee Discussion:

- The program should begin their review of PrUS for perchloroethylene immediately. This is an opportunity to reach the dry cleaners using more than 1000 lbs of PERC, to educate them about safer alternatives, and to focus on the preferred alternatives.
- Stay focused on TUR opportunities and Massachusetts. The focus of the program is Toxics Use Reduction, not listing chemicals. The TUR list shouldn't become an international list of chemicals for others to use; look hard at what is important for MA. The program should take a serious look at what chemicals are actually used in the state. However, the program should continue to take notice of chemicals that may not be used now, but could be considered attractive substitutes because they are not listed: catching up with practices after a chemical is being used is more difficult than listing it before. There is a role for the strategic listing of hazardous chemicals that could be substitutes for HHS.
- The program could work with other boards or groups to encourage more TUR, for example, what the program is doing with formaldehyde in cosmetology. There are other opportunities in other areas not covered by TURA. What's being used across the Commonwealth? What are workers being exposed to? Are their particular processes or chemicals that need to be addressed or workplace issues? As the program is looking into the asthmagen issue, it should also consider sensitizers, which can have serious and irreversible effects.
- Could the program do something similar to the EPA Rhode Island air monitoring study for TCE?
- Do we know who the suppliers of TCE are? Can we approach them again about alternatives to TCE? Many vendors offer alternatives. We only have information on Massachusetts TURA filers but not for surrounding states.
- Alternatives to phthalates and brominated and chlorinated flame retardants should be a focus. For example, regulatory programs, including TURA, have not kept up with new commercially available halogenated flame retardants that are likely hazardous.
- What is the impact on workers? Impacts should be explicitly included in fact sheets and case studies.
- Is there data available published by state health officials on exposures related to chemical use that could be better used? DPH has a searchable database. OSHA collects information on incidences – it would be good to analyze that information before TURI does their labor/worker focus group.

¹ cyanide compounds, ethylene oxide, nickel compounds, chlorine, arsenic compounds, benzene, and hydrogen cyanide

Schedule Next Meeting

- The next Advisory Committee meeting is scheduled on Wednesday, September 14, 2011 from 1 PM to 4 PM at 100 Cambridge Street, Boston, MA.

Handouts

- The following handouts were distributed:
 - Advisory Committee Meeting agenda
 - Draft Minutes for 5/19 Advisory Committee meeting.
 - TURA Fee for Companies With Less Than 10 Employees
 - OTA Recommendation Concerning Priority User Designation of Trichloroethylene